

PRISONER'S CIVIL RIGHTS COMPLAINT (Rev. 05/2015)

IN THE UNITED STATES DISTRICT COURT
FOR THE Southern DISTRICT OF TEXAS
Houston DIVISION

United States District Court
Southern District of Texas
FILED

APR 28 2020

David J. Bradley, Clerk of Court

David Allen Russell #1636898
Plaintiff's Name and ID Number
3 Jester Rd. Jester Unit
Richmond Texas 77406
Place of Confinement

CASE NO. _____
(Clerk will assign the number)

v.

Lori Davis Director - TDCJ
209 W. 14th St Ste 500, Austin, Texas
Defendant's Name and Address 78701

Lennie Townsend - Senior Warden
3 Jester Rd. Richmond, Texas 77406
Defendant's Name and Address

B. Friedrich - Asst. Warden
3 Jester Rd. Richmond, Texas 77406
Defendant's Name and Address
(DO NOT USE "ET AL.")

INSTRUCTIONS - READ CAREFULLY

NOTICE:

Your complaint is subject to dismissal unless it conforms to these instructions and this form.

1. To start an action you must file an original and one copy of your complaint with the court. You should keep a copy of the complaint for your own records.
2. Your complaint must be legibly handwritten, in ink, or typewritten. You, the plaintiff, must sign and declare under penalty of perjury that the facts are correct. If you need additional space, **DO NOT USE THE REVERSE SIDE OR BACKSIDE OF ANY PAGE.** ATTACH AN ADDITIONAL BLANK PAGE AND WRITE ON IT.
3. You must file a separate complaint for each claim you have unless the various claims are all related to the same incident or issue or are all against the same defendant, Rule 18, Federal Rules of Civil Procedure. Make a short and plain statement of your claim, Rule 8, Federal Rules of Civil Procedure.
4. When these forms are completed, mail the original and one copy to the clerk of the United States district court for the appropriate district of Texas in the division where one or more named defendants are located, or where the incident giving rise to your claim for relief occurred. If you are confined in the Texas Department of Criminal Justice, Correctional Institutions Division (TDCJ-CID), the list labeled as "VENUE LIST" is posted in your unit law library. It is a list of the Texas prison units indicating the appropriate district court, the division and an address list of the divisional clerks.

FILING FEE AND IN FORMA PAUPERIS (IFP)

1. In order for your complaint to be filed, it must be accompanied by the statutory filing fee of \$350.00 plus an administrative fee of \$50.00 for a total fee of **\$400.00**.
2. If you do not have the necessary funds to pay the fee in full at this time, you may request permission to proceed *in forma pauperis*. In this event you must complete the application to proceed *in forma pauperis*, setting forth information to establish your inability to prepay the fees and costs or give security therefor. You must also include a current six-month history of your inmate trust account. If you are an inmate in TDCJ-CID, you can acquire the application to proceed *in forma pauperis* and the certificate of inmate trust account, also known as *in forma pauperis* data sheet, from the law library at your prison unit.
3. The Prison Litigation Reform Act of 1995 (PLRA) provides "... if a prisoner brings a civil action or files an appeal *in forma pauperis*, the prisoner shall be required to pay the full amount of a filing fee." See 28 U.S.C. § 1915. Thus, the court is required to assess and, when funds exist, collect, the entire filing fee or a initial partial filing fee and monthly installments until the entire amount of the filing fee has been paid by the prisoner. If you submit the application to proceed *in forma pauperis*, the court will apply 28 U.S.C. § 1915 and, if appropriate, assess and collect the entire filing fee or an initial partial filing fee, then monthly installments from your inmate trust account, until the entire \$350.00 statutory filing fee has been paid. (The \$50.00 administrative fee does not apply to cases proceeding *in forma pauperis*.)
4. If you intend to seek *in forma pauperis* status, do not send your complaint without an application to proceed *in forma pauperis* and the certificate of inmate trust account. Complete all essential paperwork before submitting it to the court.

CHANGE OF ADDRESS

It is your responsibility to inform the court of any change of address and its effective date. Such notice should be marked "**NOTICE TO THE COURT OF CHANGE OF ADDRESS**" and shall not include any motion for any other relief. Failure to file a NOTICE OF THE COURT OF CHANGE OF ADDRESS may result in the dismissal of your complaint pursuant to Rule 41(b), Federal Rules of Civil Procedure.

I. PREVIOUS LAWSUITS:

- A. Have you filed *any* other lawsuit in state or federal court relating to your imprisonment? ☒ YES ☐ NO
- B. If your answer to "A" is "yes", describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, giving the same information.)
 1. Approximate date of filing lawsuit: July 19, 2011
 2. Parties to previous lawsuit:

Plaintiff(s) David Russell

Defendant(s) Sheriff of Cameron County, Steve Carillo, et. al.
 3. Court: (If federal, name the district; if state, name the county.) Southern- Brownsville
 4. Cause number: B: 11- cv- 143
 5. Name of judge to whom case was assigned: Hilda Tague
 6. Disposition: (Was the case dismissed, appealed, still pending?) Dismissed
 7. Approximate date of disposition: Nov. 20, 2017 - Appeal Dismissed, March 07, 2019

I. Previous Lawsuits, continued.

February 27, 2012 Russell v. Swift, et al. Pecos Division
Civil Action 4:12-cv-36, Honorable Robert J. J. Western Dist.
Dismissed without prejudice August 29, 2013

November 27, 2012 Russell v. Thomas, et. al. Abuse Division
Civil Action 12-cv-184 ~~Honorable~~ Honorable Sam Cummings Northern Dist.
Dismissed without prejudice April 30, 2013

May 23, 2013 Russell v. Davis et al Southern Dist.
Civil Action 2013-cv-142 Honorable Nelson Rios Corpus Christi
Dismissed without prejudice January 31, 2014

July 08, 2013 Russell v. Unknown Driver Southern Dist.
Civil Action 4:13-cv-1991 Honorable Lynn Hughes Houston Div.
Dismissed without prejudice February 04, 2014

December 17, 2013 Russell v. Bell et al Eastern Dist.
Civil Action 6:13-cv-966 Honorable Nicole Mitchell Tyler Dist.
Dismissed with prejudice January 28, 2015

December 27, 2013 Russell v. Officials of Tulsa-TCES et al
Civil Action W:13-cv-399 Honorable Walter Smith Western Dist
Dismissed without prejudice August 02, 2016 Waco Div.

July 18, 2014 Russell v. Bell, et al. Western Dist
Civil Action A:14-cv-667-LY Honorable Lee Seakel Austin Div.
Dismissed with prejudice June 22, 2015

March 10, 2016 Russell v. Polket, et al. Eastern Dist.
Civil Action 6:17-cv-148 Honorable Ron Clark Tyler Div.
Dismissed without prejudice January 25, 2018

April 12, 2017 Russell v Yancy Eastern Dist.
Civil Action 6:17-cv-217 Honorable Ron Clark Tyler Div.
Dismissed without prejudice August 22, 2017

I. Previous Lawsuits, continued.

the following cases were severed and transferred by the courts:

File date unknown Western Dist. Pecos Div.
Civil Action PE: 13-cv-11 Robert Jannell
Dismissed For Want of Prosecution - no appeal

File date unknown Northern Dist. Amarillo Div.
Civil Action 2:13-cv-16 Unknown Honorable
Dismissed F. W. O. P. - no appeal

File date unknown Western Dist. Waco Div.
Civil Action WS 13-cv-30 Honorable Walter Smith
Dismissed F. W. O. P. - no appeal

File dates unknown Eastern Dist. Tyler Div.
Civil Actions 6:14-cv-40; 6:14-cv-41; 6:14-cv-42; and
6:14-cv-43; Dismissed on misc. dates - F. W. O. P. - no appeal

I have no dates, judges, or disposition dates because L. C. Powledge
Officers confiscated or converted these legal documents from me. No
resolution through administrative remedies.

State Court: September 28, 2016, Russell v. Rayford et al.
Civil Action DCCV16-442-3, Honorable Mark Calhoun?
Dismissed without prejudice, Appeal #12-16-298-CV- 12th Dist. COA.
Mandate issued February 27, 2017; Supreme Court Cert. denied April 07, 2017

Filed: July 09, 2019 Russell v. Plaintiff Anderson County
Civil Action DCCV19-1102-87 Honorable Deborah Evans 87th Dist
Dismissed without Prejudice January 14, 2020 Appeal Pending

Filed July 10, 2019 Russell v. Davis et al. Anderson County
Civil Action DCCV19-1204-349 Honorable Pam Fletcher 349th Dist.
Action Pending

November 20, 2019 No. 12-19-382-CV Dismissed F. W. O. J Dec. 04, 2019
December 30, 2019 No. 12-19-419-CV Dismissed (Per Curiam) - Moot.
In re David Allen Russell COA-Mandamus - 12th Dist

II. PLACE OF PRESENT CONFINEMENT: Jester III Unit

III. EXHAUSTION OF GRIEVANCE PROCEDURES:

Have you exhausted all steps of the institutional grievance procedure? YES ☒ NO

Attach a copy of your final step of the grievance procedure with the response supplied by the institution.

IV. PARTIES TO THIS SUIT:

A. Name and address of plaintiff: David Allen Russell
3 Jester Road
Richmond, Texas 77406

B. Full name of each defendant, his official position, his place of employment, and his full mailing address.

Defendant #1: Lorie Davis, Director, TDCJ- CID
209 W. 14th St. Price Daniels Bldg. Ste. 500, Austin, Texas 78701

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Flagrant disregard to health, safety, or well being of me during outbreak & resolutions

Defendant #2: Lorrie Townsend, Senior Warden - Jester III Unit
3 Jester Road Richmond, Texas 77406

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

Flagrant disregard to health, safety, or well being of me during outbreak & resolutions

Defendant #3: B. Fredrick, Asst Warden - Jester III Unit
3 Jester Road, Richmond, Texas 77406

Briefly describe the acts(s) or omission(s) of this defendant which you claimed harmed you.

Flagrant disregard to health, safety, or well being of me during outbreak & resolutions

Defendant #4: A. Washington, Major of Corrections Officer - Jester III
3 Jester Road, Richmond, Texas 77406

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

Flagrant disregard to health, safety, or well being of me during outbreak & resolutions

Defendant #5: _____

Briefly describe the act(s) or omission(s) of this defendant which you claimed harmed you.

V. STATEMENT OF CLAIM:

State here in a short and plain statement the facts of your case, that is, what happened, where did it happen, when did it happen, and who was involved. Describe how each defendant is involved. You need not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach extra pages if necessary, but remember the complaint must be stated briefly and concisely. IF YOU VIOLATE THIS RULE, THE COURT MAY STRIKE YOUR COMPLAINT.

I am the plaintiff; defendants are Lonnie Townsend, B. Fredrick, A. Washington, and Lorie Davis. All defendants have a duty to implement and utilize the policies and directives from management and failed to ensure his employees follow those policies and directives that provide reasonable safety and health of me, failing to ensure administrative remedies and access thereof and knowing said remedies, acts, and/or omissions were being unresolved or addressed, thusly abandoning and subjecting me to an unreasonable risk of serious harm or death. I am an inmate in the care, custody and control of the TDCJ when the acts complained of herein occurred and
See attached extra pages

VI. RELIEF:

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Declaratory Judgment rendered, issue mandatory injunctive relief and emergency orders to preserve my life and access to courts.

VII. GENERAL BACKGROUND INFORMATION:

A. State, in complete form, all names you have ever used or been known by including any and all aliases.

David Allen Russell and no others.

B. List all TDCJ-CID identification numbers you have ever been assigned and all other state or federal prison or FBI numbers ever assigned to you.

01636898 and no others

VIII. SANCTIONS:

A. Have you been sanctioned by any court as a result of any lawsuit you have filed? ☒ YES ☐ NO

B. If your answer is "yes," give the following information for every lawsuit in which sanctions were imposed. (If more than one, use another piece of paper and answer the same questions.)

1. Court that imposed sanctions (if federal, give the district and division): East Teller & Western Austin

2. Case number: 6113-CV-866 & A-14-CV-667-LY respectively.

3. Approximate date sanctions were imposed: 01-28-15 & 06-22-15 respectively

4. Have the sanctions been lifted or otherwise satisfied? ☐ YES ☒ NO

knowing I have a protected right to humane and reasonably safe premises, continued with business as usual and failed to abate, or limit exposure to a contagion knowing said virus will cause serious bodily injury and/or death. (Covid-19 virus)

Defendants have failed to provide any reasonable prevention of the spread of the virus, failed to implement social distancing, provide sanitizing measures for me, provide approved medical personal protective equipment to me and continues to crowd up to 200 inmates in a single location where I am within 10 inches from the next inmate in the dining hall and shower area.

Subordinate officers continue to touch my property and id with no personal protective equipment nor any sanitizing agents thereafter to prevent the spread of this deadly virus.

Subordinate officers walk around the dorm of fifty-five (55) other inmates with no mask and exposes me to a likelihood of serious bodily injury or death not understanding they may have Covid-19.

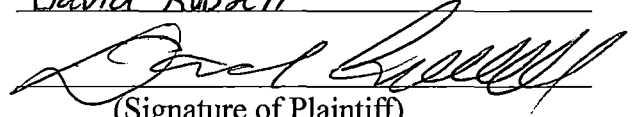
Administrative remedies have proved to be ineffective in protecting me from any injury because I have submitted two grievances on this writ that has never returned nor advised that my grieves have been received or processed. I am without recourse at law or appeal

C. Has any court ever warned or notified you that sanctions could be imposed? ☒ YES ☐ NO

D. If your answer is "yes," give the following information for every lawsuit in which a warning was issued. (If more than one, use another piece of paper and answer the same questions.)

1. Court that issued warning (if federal, give the district and division): Austin - Western
2. Case number: A:14-cv-667-LY
3. Approximate date warning was issued: Unknown date - Prison officials confiscated that material relevant to this lawsuit


Executed on: 04-17-2020
DATE

David Russell

(Signature of Plaintiff)

PLAINTIFF'S DECLARATIONS

1. I declare under penalty of perjury all facts presented in this complaint and attachments thereto are true and correct.
2. I understand, if I am released or transferred, it is my responsibility to keep the court informed of my current mailing address and failure to do so may result in the dismissal of this lawsuit.
3. I understand I must exhaust all available administrative remedies prior to filing this lawsuit.
4. I understand I am prohibited from bringing an *in forma pauperis* lawsuit if I have brought three or more civil actions or appeals (from a judgment in a civil action) in a court of the United States while incarcerated or detained in any facility, which lawsuits were dismissed on the ground they were frivolous, malicious, or failed to state a claim upon which relief may be granted, unless I am under imminent danger of serious physical injury.
5. I understand even if I am allowed to proceed without prepayment of costs, I am responsible for the entire filing fee and costs assessed by the court, which shall be deducted in accordance with the law from my inmate trust account by my custodian until the filing fee is paid.

Signed this Seventeenth day of April, 20 20.
(Day) (month) (year)

David Russell

(Signature of Plaintiff)

WARNING: Plaintiff is advised any false or deliberately misleading information provided in response to the above questions may result in the imposition of sanctions. The sanctions the court may impose include, but are not limited to, monetary sanctions and the dismissal of this action with prejudice.